

PR#9833

THOMPSON, STEVE

4/7/2009

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, et al.,

Plaintiff,

vs.

CASE NO. 05-CV-00329-GKF SAJ

TYSON FOODS, INC., et al.,
Defendants.

VIDEOTAPED DEPOSITION OF STEVE THOMPSON
TAKEN ON BEHALF OF THE DEFENDANTS
ON APRIL 7, 2009, BEGINNING AT 9:30 A.M.
IN OKLAHOMA CITY, OKLAHOMA

APPEARANCES:

On behalf of the PLAINTIFF:

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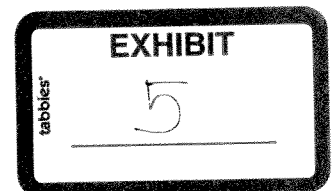
On behalf of the PLAINTIFFS:

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On behalf of the DEFENDANT-PETERSON FARMS, INC.:
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REPORTED BY: Laura L. Robinson, CSR, RPR



1 before?

2 A. Yes.

3 Q. Okay. When we go through today, and I refer
4 to the lawsuit or this lawsuit, do you understand I'm
5 referring to the lawsuit that's described on this
6 document, that's the State of Oklahoma versus Tyson
7 Foods and a number of other poultry companies?

8 A. I do.

9 Q. Okay. So that's the whole reason we are
10 here. That's no big surprise to you.

11 A. Okay.

12 Q. Now, this lawsuit, do you know when it was
13 filed?

14 A. I don't know the specific date. My
15 recollection is that it was sometime in 2004, 2005.

16 Q. Now, did anyone consult with you before this
17 lawsuit was filed about the filing of this lawsuit?

18 A. No.

19 Q. Did you give your blessing to the filing of
20 this lawsuit?

21 A. In the time frame that the lawsuit was
22 filed, we met with the governor, and we agreed that
23 this was the state of Oklahoma's lawsuit. And being
24 an agency of state government, we are a party to that.
25 We did not request the lawsuit, but we understood that

1 a food processing facility?

2 A. It could be. It could be related to a point
3 source water discharge, it could be related to air
4 quality issues, it could be related to the improper
5 disposal of process waste. It could be any number of
6 those things.

7 Again, I don't have a independent
8 recollection of having done so, but it could have
9 happened.

10 Q. All right. You know this case, this lawsuit
11 involves allegations relating to the manner in which
12 poultry litter or some may say poultry waste has been
13 handled or utilized within the Illinois River
14 Watershed. Do you understand that to be the case?

15 A. I do.

16 Q. All right. That's the context for my
17 question.

18 A. Okay.

19 Q. So let me re-ask the question, if you don't
20 mind.

21 A. Okay.

22 Q. Have you as executive director of Oklahoma
23 Department of Environmental Quality made a finding
24 that any one of these companies listed as the
25 defendant in this case has caused pollution of the

1 waters of the state of Oklahoma in the Illinois River
2 Watershed by virtue of management or utilization of
3 poultry litter or poultry waste?

4 A. I have not.

5 MR. HAMMONS: Object to the form.

6 THE WITNESS: Sorry.

7 MR. HAMMONS: I'm sorry, I object to the
8 form. You can answer.

9 Q. (BY MR. MCDANIEL) I'm sorry, sir, would you
10 just repeat your answer so the video --

11 A. I have not.

12 Q. Now, the same context, sir, have you as
13 executive director made a finding that any poultry
14 grower operating under a contract with any one of the
15 companies that's listed as a defendant in this case
16 has caused pollution to the waters of the state of
17 Oklahoma in the Illinois River Watershed?

18 MR. HAMMONS: Object to the form.

19 THE WITNESS: Again, in the context of --
20 let me be clear. If a poultry grower has a violation
21 under our direct statutory responsibility, we could
22 have. For instance, if they had a septic tank that
23 was malfunctioning.

24 But in the context of the lawsuit, the
25 answer to your question is no, I have not.

1 waste?

2 MR. HAMMONS: Object to the form.

3 THE WITNESS: I don't have enough
4 information to make an independent judgment about
5 that.

6 Q. (BY MR. MCDANIEL) Do you have any reason to
7 doubt that Oklahoma Department of Agriculture Food and
8 Forestry is performing their statutory duties with
9 regard to poultry waste management?

10 MR. HAMMONS: Object to the form.

11 THE WITNESS: No. Sorry. No.

12 Q. (BY MR. MCDANIEL) All right. I understand
13 from our earlier discussion that ODEQ as sort of the
14 final backstop as it comes to environmental protection
15 in Oklahoma, has ODEQ elected to step in to assert
16 jurisdiction with regard to the regulation of poultry
17 waste management in Oklahoma?

18 A. As of this date, no.

19 Q. Has the Oklahoma Department of Environmental
20 Quality made a finding that the spreading of poultry
21 waste on lands within the Illinois River Watershed may
22 present an imminent and substantial endangerment to
23 human health?

24 MR. HAMMONS: Object to the form.

25 THE WITNESS: No.

1 Q. (BY MR. MCDANIEL) Has Oklahoma Department
2 of Environmental Quality made a finding that the
3 spreading of poultry waste on lands within the IRW may
4 present an imminent and substantial endangerment to
5 the environment?

6 MR. HAMMONS: Object to the form.

7 THE WITNESS: No.

8 Q. (BY MR. MCDANIEL) Sir, are you generally
9 familiar with the Federal Comprehensive Environmental
10 Response Compensation and Liability Act?

11 A. CERCLA.

12 Q. Yes, sir, that's why we all say CERCLA,
13 because I had to carefully read that, not to step all
14 over it.

15 And some people, maybe lay people, but some
16 people call it the Superfund Act.

17 A. They do.

18 Q. In a broad conceptual way, tell us what that
19 statute is all about.

20 A. Well, as I understand it, it is generally
21 about the clean-up of hazardous waste sites within the
22 state, within the country, within the United States.

23 Q. You agree that it deals with releases or
24 threatened releases of hazardous substances?

25 A. I do.

1 if you know?

2 A. Oh, I don't really know. I don't really
3 have that answer. There is a lot of rural water
4 systems in the state. Obviously the communities have
5 drinking water systems. I really would -- I would
6 hate to guess. I could find that out for you, but I
7 would hate to guess at the number, because there are
8 an awful lot of very small rural water systems in the
9 state, all that are under our jurisdiction.

10 Q. I have seen it estimated in the neighborhood
11 of 18, and I say in the neighborhood. Does that
12 strike you as a reasonable --

13 A. I would -- I guess I wouldn't argue with
14 that number.

15 Q. If you don't know, you don't know.

16 A. I just don't know. I mean, there is -- I
17 just really don't know.

18 Q. If you look at the state of Oklahoma as a
19 whole, has the incidents of disinfection by-products
20 reported in excess of the regulatory limits for the
21 systems in the Illinois River Watershed been higher
22 than the state as a whole?

23 A. I just don't have that information.

24 Q. Has the Oklahoma Department of Environmental
25 Quality made a finding that any incident of

1 disinfection by-products in excess of regulatory
2 limits for any water treatment system in the Oklahoma
3 portion of the Illinois River Watershed was caused by
4 the use of poultry waste in the Illinois River
5 Watershed?

6 MR. HAMMONS: Object to the form.

7 THE WITNESS: No.

8 Q. (BY MR. MCDANIEL) Now, what is Oklahoma
9 Department of Environmental Quality's role with regard
10 to the quality of recreational waters?

11 A. Well, our specific statutory authority rest
12 with point source discharge, or point sources of
13 pollution, both industrial and municipal.

14 Q. Does ODEQ review the data collected from
15 sampling of rivers and streams in Oklahoma?

16 A. Oh, it does. We have also authority to do
17 TMDLs.

18 Q. Now, the data from this surface water
19 sample -- were you going to say something else?

20 A. Yes.

21 Q. Go ahead.

22 A. The DEQ is responsible for -- I'm sorry, no,
23 we are responsible to do TMDLs. And in doing so, we
24 do review data from other agencies. Most of the data
25 in the state is collected by other agencies.

1 A. Although it is rare, it does occur.

2 Q. Has there been any occasion where this
3 organism that causes PAM, has it ever been identified
4 in any of the surface waters in the Illinois River to
5 your knowledge?

6 A. Not to my knowledge.

7 Q. Has the Oklahoma Department of Environmental
8 Quality made any findings that levels of fecal
9 indicator bacteria in the Illinois River Watershed
10 surface waters in excess of regulatory limits was
11 caused by any operations associated with any defendant
12 in this case?

13 MR. HAMMONS: Object to the form.

14 THE WITNESS: No.

15 Q. (BY MR. MCDANIEL) Sir, I'm handing you what
16 I have marked as Exhibit 7 to your deposition.
17 Identify that for the record, please.

18 (Defendant's Exhibit 7 marked for
19 identification)

20 A. This is a fact sheet issued by the
21 department related to biosolids generated during the
22 treatment of sewage, sanitary sewage.

23 Q. This is published by ODEQ?

24 A. It is.

25 Q. Give us a general definition of what a

1 A. Not to my knowledge.

2 Q. All right, sir, I want to look back at this
3 sheet that says priorities for the Bates numbers,
4 2442.

5 A. Okay.

6 Q. Next to the last bullet point, under
7 identified needs, it says, "Addressed problems within
8 the entire watershed;" correct?

9 A. It does.

10 Q. Now, I want to ask you, other than the
11 allegations that have been made in this lawsuit that
12 relate to the poultry, poultry operations, what
13 threats to water quality exist in the Illinois River
14 watershed today, to your knowledge?

15 A. Well, there are a lot of things that could
16 have an impact. I'm not sure I would characterize it
17 as a threat, but there are things that could have an
18 impact in it.

19 Septic systems have been mentioned as the
20 possibility of having an impact to it, point source
21 discharges, background. There is a number of other
22 things.

23 Q. Commercial fertilizer, would you include
24 that as a potential impact?

25 A. Commercial fertilizer.